



requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.<sup>6</sup> Applying a two-part test, the Commission will grant a request for a LATA boundary modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.<sup>7</sup> The Qwest Petition proposes to establish two-way, non-optional ELCS, and is accompanied by an order issued by the Oregon Commission approving the ELCS request.<sup>8</sup> No party filed comments opposing the Qwest Petition.

### III. DISCUSSION

4. We conclude that Qwest's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that Qwest has shown that a public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated as a local calling area.<sup>9</sup> In reaching this finding, we note that Qwest proposes to offer traditional, two-way, non-optional local service in the ELCS,<sup>10</sup> which the Commission has determined to be consistent with the public interest.<sup>11</sup> Further, the Oregon Commission conducted an extensive community of interest analysis prior to approving the ELCS.<sup>12</sup> We find it a persuasive indicator of a community of interest that Qwest's petition satisfies all of the Oregon Commission's community of interest criteria, including customer polling data demonstrating that over 80 percent of responding customers favored ELCS.<sup>13</sup> We find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

5. Qwest also satisfies the second prong of the two-part test because it has already opened its market to competition in Oregon and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.<sup>14</sup> Thus, granting the requested modification has no bearing on Qwest's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect upon competition because modification of the LATA boundary would affect only a

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<sup>5</sup> *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

<sup>6</sup> *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, File No. NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392-99 (1999).

<sup>7</sup> *See SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, File No. NSD-L-00-25, Memorandum Opinion and Order, 18 FCC Rcd 26398 (2003), paras. 2, 6-8.

<sup>8</sup> Qwest Petition at 2-3; Oregon Order at 1, 6.

<sup>9</sup> *See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (*July 1997 LATA Order*).

<sup>10</sup> Qwest Petition at 2-3.

<sup>11</sup> *See July 1997 LATA Order*, 12 FCC Rcd at 10646.

<sup>12</sup> *See* Qwest Petition at Exhibit B.

<sup>13</sup> *See* Qwest Petition at 4, Exhibit B at 5-6.

<sup>14</sup> *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon, and South Dakota*, WC Docket No. 3-11, Memorandum Opinion and Order, 18 FCC Rcd 7325 (2003).

small number of access lines.<sup>15</sup> As a result, granting Qwest's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve Qwest's petition for limited LATA boundary modifications.

6. We grant this relief solely for the limited purpose of allowing Qwest to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit Qwest to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.<sup>16</sup>

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<sup>15</sup> As noted previously, the Siletz exchange has 1,265 access lines, and the Lincoln City exchange has 11,271 access lines. See Qwest Petition at 3. For the purposes of ELCS petitions, we generally consider the number of access lines from customers in the smaller exchange who seek to reach businesses and services in the other exchange because the smaller exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). Therefore, for the purposes of reviewing these modifications and based on the Qwest Petition's community of interest statement, we consider Qwest's 1,265 access lines in the Siletz exchange, a number well within Commission precedent. See Qwest Petition at 3; *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an ELCS petition affecting over 30,000 access lines).

<sup>16</sup> Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply. See, e.g., 47 U.S.C. § 272(f)(1) (stating that a BOC is required to provide interLATA services through a separate affiliate for three years after the date on which it is authorized to provide in-region, interLATA telecommunications services).

**IV. ORDERING CLAUSE**

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Qwest Corporation for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional ELCS between specific locations in Oregon, identified in WC Docket No. 04-152, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

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